

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KENNETH L. TEPPER, IN HIS CAPACITY
AS THE LIQUIDATION TRUSTEE FOR
THE GFGI LIQUIDATION TRUST,

Plaintiff,

v.

KEEFE, BRUYETTE & WOODS, INC. and
KBW, INC.,

Defendants.

CIVIL CASE NO. 3:11-cv-2087-L

Hon. Renee H. Toliver, U.S.M.J.

**PLAINTIFF'S SUPPLEMENTAL APPENDIX IN SUPPORT OF PLAINTIFF'S
MOTION TO OVERRULE DEFENDANTS' OBJECTIONS AND COMPEL
DOCUMENTS IN RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS**

E. Lee Morris

TX Bar No. 00788079

Munsch Hardt Kopf & Harr, P.C.

500 N. Akard Street, Suite 3800

Dallas, TX 75201-6659

Telephone: 214.855.7500

Facsimile: 214.855.7584

lmorris@munsch.com

Hersh Kozlov (admitted pro hac vice)

Patrick Matusky (admitted pro hac vice)

Vincent J. Nolan III (admitted pro hac vice)

Duane Morris LLP

1940 Route 70 East, Suite 200

Cherry Hill, NJ 08003

856.874.4200 - Telephone

856.424.4446 – Facsimile

hkozlov@duanemorris.com

pmatusky@duanemorris.com

vnolan@duanemorris.com

Wayne Mack (admitted pro hac vice)

James Steigerwald (admitted pro hac vice)

Duane Morris LLP

30 South 17th Street

Philadelphia, PA 19103-4196

215.979.1000 - Telephone

215.979.1020 – Facsimile

wamack@duanemorris.com

jhsteigerwald@duanemorris.com

*Counsel For Kenneth L. Teppar, In His
Capacity As The Liquidation Trustee For The
GFGI Liquidation Trust*

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Respectfully submitted,

Dated: March 29, 2013

E. Lee Morris
TX Bar No. 00788079
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street, Suite 3800
Dallas, TX 75201-6659
Telephone: 214.855.7500
Facsimile: 214.855.7584
lmorris@munsch.com

*Counsel For Kenneth L. Tepper, In His
Capacity As The Liquidation Trustee For The
GFGI Liquidation Trust*

s/ Hersh Kozlov
Hersh Kozlov (admitted pro hac vice)
Patrick Matusky (admitted pro hac vice)
Charles M. Hart (admitted pro hac vice)
Vincent J. Nolan III (admitted pro hac
vice)
Duane Morris LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003
856.874.4200 - Telephone
856.424.4446 – Facsimile
hkozlov@duanemorris.com
pmatusky@duanemorris.com
vnolan@duanemorris.com

Wayne Mack (admitted pro hac vice)
James Steigerwald (admitted pro hac
vice)

Duane Morris LLP

30 South 17th Street

Philadelphia, PA 19103-4196

215.979.1000 - Telephone

215.979.1020 – Facsimile

wamack@duanemorris.com

jhsteigerwald@duanemorris.com

***Counsel For Kenneth L. Tepper, In His
Capacity As The Liquidation Trustee
For The GFGI Liquidation Trust***

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KENNETH L. TEPPER, IN HIS CAPACITY
AS THE LIQUIDATION TRUSTEE FOR
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Plaintiff,

v.

KEEFE, BRUYETTE & WOODS, INC. and
KBW, INC.,

Defendants.

CIVIL CASE NO. 3:11-cv-2087-L

Hon. Sam A. Lindsay, U.S.D.J.


DECLARATION OF CHARLES M. HART

I, Charles M. Hart, declare as follows:

1. I am a member in good standing of the bars of New Jersey and Pennsylvania and am admitted *pro hac vice* in this matter. I am a partner in the law firm of Duane Morris LLP, which represents Plaintiff Kenneth L. Tepper, in his capacity as the Liquidation Trustee for the GFGI Liquidation Trust. I submit this declaration in support of Plaintiff's Motion to Overrule Defendants' Objections and Compel Documents in Response to Plaintiff's First Set of Requests.

2. The documents attached hereto as A-0001 through and including A-0012 are true and correct copies of the relevant portions of the documents listed in the Appendix Table of Contents above.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of March, 2013, in Cherry Hill, New Jersey.



Charles M. Hart

From: Dubuque, Kenneth R. <Kenneth.Dubuque@guarantybank.com>
Sent: Friday, July 25, 2008 2:44 PM
To: Almy, Scott <Scott.Almy@guarantygroup.com>; Murff, Ron
<Ron.Murff@guarantybank.com>; LaForge, Rusty
<Rusty.LaForge@guarantygroup.com>
Subject: FW: Earnings Call Yesterday

From: Senchak, Andy [mailto:asenchak@kbw.com]
Sent: Friday, July 25, 2008 1:42 PM
To: Dubuque, Kenneth R.
Subject: RE: Earnings Call Yesterday

We will track this down.

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From: Dubuque, Kenneth R. [mailto:Kenneth.Dubuque@guarantybank.com]
Sent: Friday, July 25, 2008 2:05 PM
To: Senchak, Andy
Subject: FW: Earnings Call Yesterday

From: LaForge, Rusty
Sent: Friday, July 25, 2008 1:02 PM
To: Almy, Scott; Dubuque, Kenneth R.
Cc: Murff, Ron
Subject: RE: Earnings Call Yesterday

I just noticed this this morning:

Please be aware that the article by SNL Financial said that the comments in question were by KBW's Chairman and CEO, John Duffy. However, while John did mention us in his opening dialogue, it was actually KBW's CFO/CAO/EVP, Robert Giambrone, that made the more detailed comments regarding Guaranty that were mentioned in the SNL Financial article. He did so during the Q&A portion of their earnings call.

Thanks,
Rusty

DALLAS006301

A-0001

Rusty LaForge
SVP, Director of Investor Relations
Guaranty Financial Group Inc.
8333 Douglas Avenue | 16th Floor
Dallas | Texas | 75225
Tel 214.360.1967 | Fax 866.274.9702
To learn more, visit <http://www.guarantygroup.com/>

From: Almy, Scott
Sent: Friday, July 25, 2008 12:58 PM
To: Dubuque, Kenneth R.
Cc: Murff, Ron; LaForge, Rusty
Subject: FW: Earnings Call Yesterday

*** Privileged & Confidential ***
Attorney-Client and Attorney Work Product Privileges

FYI

From: Almy, Scott
Sent: Friday, July 25, 2008 12:57 PM
To: Murphy, Patricia
Subject: Earnings Call Yesterday

Just a note to let you know that comments made in reference to Guaranty by KBW during your earnings call Thursday were met with a fair amount of surprise and outrage here. Whether intentional or not, the comments cast our company in a very negative light. As evidence of this fact, we have already begun fielding calls this morning from third parties, each of which have expressed concern and surprise over the comments.

As you probably are aware, KBW is considered an "institutional affiliated party" of Guaranty under federal banking regulations. By operation of law, KBW owes our company, at a minimum, a special duty of care in connection with any and all consulting and advisory agreements. Our regulators, depositors and investors are keenly aware of public comments offered in respect to Guaranty and its subsidiaries. This is particularly true of public comments offered by our outside advisors. Please be guided accordingly.

I understand that Ken has already placed a call to Andy this morning.

Scott A. Almy | Guaranty Financial Group Inc.
EVP, General Counsel & Secretary
8333 Douglas Avenue | Dallas, Texas | 75225
214.360.1932 | Fax 214.360.1941 | Mobile 214.673.1909
scott.almy@guarantygroup.com

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A-0002

Brief Summary of KBW's Involvement with Guaranty Financial

January 15, 2008	Guaranty Financial Capital Infusion Pitch Examined the current state of the financial markets with examples of recent recapitalizations. Considered and ran analysis on the option of doing the following: rights offering, follow-on common equity offering, equity infusion, convertible preferred stock, convertible bonds, noncumulative perpetual preferred securities, enhanced trust preferred securities and trust preferred securities. Also ran analysis on the possibility of a sale of the company as well as the current Texas market environment. Introduced a list of potentially interested parties both private equity investors and potential buyers in a sale situation.
February 07, 2008	Research Concerning Shareholder Cost Basis Modeled the approximate cost basis of influential shareholder to determine the positioning of shareholder and to further develop strategy for moving forward.
February 11, 2008 (Week of)	KBW's Due Diligence of Guaranty Financial During the due diligence of Guaranty, KBW: <ul style="list-style-type: none"> - reviewed the strategic plan - used KBW's Fixed Income and Balance Sheet Restructuring Group's market knowledge to test valuation assumptions in examining the securities portfolio and related accounting issues - talked to a "Big Four" accounting firm about the possibility of an impairment and reviewed the cash flows of the MBS portfolio - conducted a preliminary review of loan portfolio and adequacy of loan loss reserve - stress-tested loan loss reserves based on potential deterioration in classified loans - used valuation scenarios to mark-to-market balance sheet and determined potential capital need given various scenarios - analyzed strategic possibility of selling insurance building as well as the company headquarter building to obtain additional capital
February 12, 2008	Peer Comparison Ran peer comparison for Guaranty to better analyze the institution in relative terms to peers in order to better understand positioning and market related concerns.
February 25, 2008	Board Meeting Examined the scope of KBW's engagement with focus on the short-term needs of capital as well as the long-term positioning to execute a strategic plan considering balance sheet restructuring and identifying and pursuing M&A opportunities. KBW presented an overview of the current market environment, securities portfolio review, loan portfolio review, Guaranty's relative capital position and various balance sheet scenarios and capital raising options.
February 26, 2008	Follow-up Presentation to the Board Analyzed and presented additional scenarios at the request of Chairman illustrating several other severities of a need for capital.
March 12, 2008	Pro Forma Capital Scenarios Updated and reanalyzed pro forma capital scenarios given various levels of market turbulence.
March 14, 2008	Detailed Timeline Created a detailed timeline of events if a rights offering was the chosen method of raising capital.
March 14, 2008	Rights Offering Overview Developed an overview of the attributes of a rights offering, the important role KBW plays and our long list of experience.
March 16, 2008	Board Meeting Directed board on more pointed direction to give authority to management to begin process of raising equity primarily via rights offering. KBW ran a thorough analysis of the over economy since the previous board meeting as conditions had materially changed. After more fully explaining the misunderstanding they market had with Guaranty KBW gave a plan on how to properly correct the market's view. KBW gave a recommendation of moving forward with a rights offering while summarizing the benefits and illustrating several of the other options considered. Outlined various hurdles due to regulatory and exchange rules and provided insight on strategy in dealing with foreseen issues include, existing shareholders, tax ramifications and the long-term implications of raising common equity. We then performed extensive modeling on the financial impact of executing a capital raise.
March 20, 2008	Ability to Pay Analysis for Potential Whole Bank Acquirors Identified potential interested parties of a whole bank sale transaction. Modeled the ability to pay for potential acquirors in order to gauge the potential multiples and buyer appetites of a entire company sale transaction as well as their price sensitivity.

March 24, 2008	<p>Board Meeting Further clarified the rights offering process and gained approval to formally proceed with direction. Outlined the next several steps towards completion.</p> <p>Potential California Branch Sale Explored and analyzed the possibility of selling Guaranty's California branch franchise and examined historical comparable transactions</p>
March 25, 2008	<p>Organizational Meeting Held an "all hands" meeting to unify the various parties and discuss issues concerning: tax ramifications, other regulatory and legal issues impacting the offer, time and responsibility schedule, other issues impacting the structure and amount of the rights offering.</p>
March 26, 2008	<p>Pro Forma Capital Scenarios and Budget Updated and reanalyzed pro forma capital at a "must have" level and incorporated with the revised 2008 budget.</p>
March 31, 2008	<p>Rights Offering Overview Used modeling to illustrate various rights offering scenarios with alternative capital structures for comparison. Provided insight to various limitations such as the NYSE 20% rule.</p> <p>DCF and IRR Ran a DCF and IRR analysis to determine an approximate present value of Guaranty in both an aggregate and per share valuation.</p>
March 31, 2008 (Week of)	<p>Virtual Data Room Continued to work with management to populate the virtual data room to be viewed by parties requesting formal due diligence with Guaranty. Demanding requests increased as parties gained access and began to review documents.</p> <p>S-1 Document Worked with legal parties to draft and review the S-1 document</p> <p>Potential Whole Company Buyers Tested the markets appetite in very general terms for a whole sale transaction contacting eight banks and four private equity groups resulting in weak responses implying low takeover multiples</p>
April 03, 2008	<p>Sales Memorandum Began preparing a sales memorandum document for a whole sale transaction. This document is used to educate potential buyers on the relevant issues regarding the company and provide explanation for common questions.</p>
April 07, 2008	<p>Board Meeting Updated the board on the prior weeks activities. (listed above) Further explained the advantages of a rights offering given the market conditions and situation. Worked with Fulbright & Jaworski to educate the board on the various tax issues created by the spin-off from Temple Inland. KBW formed and presented the proposed terms of the rights offering, illustrating the ability to withstand losses and the necessary backstops required to fully backstop the deal. Reviewed a list of potential backstops and an updated calendar.</p>
April 17, 2008	<p>Interested Parties Virtual Data Room Meetings Held conference call with interested party to further discuss the virtual data room and additional items needed to complete their analysis.</p>
April 25, 2008	<p>Internal Capital Committee Meeting Held an internal meeting of the Capital Commitment Committee concerning the rights offering. Prepared internal capital committee presentation concerning all relevant issues and an extensive overview of the structure.</p>
April 27, 2008	<p>Historical Stock Price Analysis Studied historical stock price charts of the company versus various major indices at several time periods to determined trading trends in attempts to better understand market activity.</p>
April 28, 2008 (Week of)	<p>Onsite Due Diligence Organized and ran on-site due diligence processes for an interested party. Provided information, answered questions in order to best direct and maintain the process and coordinated and attended management meetings.</p>
April 28, 2008 (Week of)	<p>Continued build-out of Virtual Data Room Fielded potential investor data requests and worked with management to obtain the files to satisfy the request. Then uploaded the files to the VDR and notified the potential investors.</p>
April 29, 2008	<p>Advised Management on First Quarter Earnings Release Worked with management to prepare for the first quarter earnings release, reviewed all documents and assisted in Q&A preparation.</p>

May 01, 2008 **Internal Sales Memorandum for Sales Force**
Combination of the investment banking team and the equity capital markets group worked together to create an internal sales memorandum to educate the sales force on the "story" of Guaranty Financial. Created solely with public information this document is designed to assist the sales team understand the offering and outstanding issues of the company.

May 05, 2008 **Management Roadshow**
Organized and facilitated a management roadshow holding 13 one-on-one meetings with current investors as well as new potential backstops and hosted 12 companies in a group lunch throughout a three day period. A roadshow presentation was created by KBW with the approval of Guaranty to help illustrate various talking points throughout the meetings.

May 06, 2008 **TSFG Convertible Case Study**
Created an illustrative case study on TSFG's convertible issuance in order to educate and provide a recent example of this type of security.

May 08, 2008 **Rights Offering Analysis**
Created an IRR analysis to determine potential returns to investors in various scenarios of the rights offering.

May 09, 2008 **Icahn Meeting**
Held extensive conversations with Icahn Associates as a potential backstop. Presented proposed terms, a timeline and a potential return analysis. Provided pro forma company projection analysis as well as the implied valuation effect including the effect of OTTI on the MBS portfolio. Modeled the pro forma Icahn ownership position subject to various rules and regulations.

May 13, 2008 **External Sales Memorandum for Potential Backstops**
Created an external sales memorandum to educate potential backstops about the "story" of Guaranty Financial. Created solely with public information this document is designed to assist the potential backstops gain an understanding of the company in a relatively short time period and can be used as reference during management discussions.

**May 12, 2008 &
May 19, 2008
(Weeks of)** **Intense Negotiation with Potential Backstops**
Held intense negotiation with potential backstops with multiple conversations each day. Involved the investment banking group, equity capital markets as well as the sales and trading team.

May 18, 2008 **Board Meeting**
Updated the board on the status of the rights offering and provided detailed guidance of the steps for the next few days. Gained approval to go forward with the final stages of negotiations with the backstops and into the next phase of the transaction.

Constant Actions

Daily Update Conference Call
Held daily "all hands" conference call to inform parties of the days activities, discuss outstanding issues and concerns and to protect the overall process of the transaction from being derailed.

Financial Projection Model
Created complex and all encompassing financial model in Excel which included ability to run various scenarios and strategic options. Included all before mentioned forms of capital raises as well as various other strategic alternatives to boost capital levels and allowed for the manipulation of various scenarios of subscription, tax issues, etc. This model was updated at a minimum on a daily basis and often times several times per day running numerous scenarios.

Reviewing and Drafting Legal Documents and Providing Insight
There has been a constant process of reviewing and providing drafting input for various legal documents including: S-1, confidentiality agreements, term sheets and standby purchase agreements.

Conference Calls With Interested Parties
Most days there are at least two or three, often times more, group calls with the interested parties. This requires a call before and after with the management of Guaranty to plan and review discussions.



**Strategic
Stock
Surveillance, LLC**

To: Rusty LaForge
Senior Vice President, Director of Investor Relations
Guaranty Financial Group Inc.

From: Erin M. O'Reilly
Strategic Stock Surveillance, LLC

Date: August 1, 2008

On June 13, 2008 we learned that Keefe Bruyette & Woods had likely established a 180k share short position. These shares were likely sold short as of May 28 at an average price of \$6.46 per share. It appears that these shares that were sold short were for KBW themselves and not for a client of KBW's. It is highly unusual for an investment banking firm to short shares of a client they are currently in the process of raising capital for and such action is typically considered a breach of material non-public information.

If you have any questions, please do not hesitate to contact us at 212-850-8155.

Duane Morris

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HERSH KOZLOV
DIRECT DIAL: +1 856 874 4201
PERSONAL FAX: +1 856 874 4361
E-MAIL: HKozlov@duanemorris.com

www.duanemorris.com

June 27, 2011

VIA FEDEX

Mitchell B. Kleinman
General Counsel and Corporate Secretary
KBW, Inc.
The Equitable Building
787 Seventh Avenue, 4th Floor
New York, NY 10019

Re: Conflict of Interest -- Short Sale of Guaranty Financial Group Stock

Dear Mr. Kleinman:

This firm represents the GFGI Liquidation Trust, the bankruptcy entity created to, among other things, investigate certain claims on behalf of Guaranty Financial Group, Inc. and its affiliates.

During 2008, Keefe Bruyette & Woods, Inc. was engaged by Guaranty Bank, Guaranty Financial Group, Inc. and their affiliates (collectively, "GFG") to represent GFG with respect to a number of undertakings, including raising capital for GFG after its spin-off from Temple-Inland, Inc. The services to be rendered by KBW on behalf of GFG included, but were not limited to, evaluating potential capital transactions, rendering financial advisory and investment banking services, and acting as the exclusive dealer for a rights offering.

We have learned that during the course of KBW's representation of GFG and while KBW was in the process of raising capital for GFG, and while KBW was acting in the nature of a fiduciary, KBW had established a significant short position in GFG stock. This position was held by KBW itself, and not on behalf of any KBW client.

Of course, it is highly unusual for an investment banking firm to short-sell the shares of a client they are currently in the process of advising, from whom they are receiving confidential information and for whom they are engaged to raise capital. Because of this highly irregular action by KBW, we must insist that you provide us with a complete explanation of the circumstances surrounding the short sale, information regarding any other trading in GFG stock

Duane Morris

Mitchell B. Kleinman

June 27, 2011

Page 2

by KBW, and the identity of all persons involved in all such trading, and any recommendation by KBW to others with regard to equity or debt positions in GFG.

Thank you for your prompt attention to this matter. I look forward to hearing from you.

Very truly yours,

DUANE MORRIS LLP


Hersh Kozlov

HK:sb

cc: Kenneth L. Tepper, Liquidation Trustee
DM112707206.1



KEEFE, BRUYETTE & WOODS

Mitchell Kleinman

Executive Vice President
General Counsel

212.887.6788
800.966.1559
Fax 212.397.9347
mkleinman@kbw.com

July 14, 2011

Hersh Kozlov
Duane Morris LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003

Dear Mr. Kozlov:

I have received your letter of June 27, 2011. Without intent to comment on the content of your letter, I want to inform you that it is the policy of this company not to provide information of the nature you have requested other than upon valid service of an enforceable subpoena, court order or similar document.

Very truly yours,

Mitchell Kleinman

Matusky, Patrick

From: McGraw, Kathleen R. on behalf of Matusky, Patrick
Sent: Thursday, February 23, 2012 5:00 PM
To: 'Kavaler, Thomas J.'
Cc: Kozlov, Hersh; 'Morris, Lee'; Steigerwald, James H.; 'dapice@sbep-law.com'; 'Suvvari, Kate'
Subject: RE: Tepper v. Keefe Bruyette & Woods, Inc. et al.
Attachments: Proposed Discovery Plan and Joint Status Report.DOCX

Dear Mr. Kavaler,

Pursuant to the Court's Orders of December 1, 2011 and December 12, 2011, and in follow up to our conference last Wednesday, I am enclosing a draft Proposed Discovery Plan and Joint Status Report.

I call to your attention that we have included in item 6.B. of the Joint Status Report a request that the limit on the number of depositions that may be taken under Fed. R. Civ. P. 30(a)(2) be increased from 10 to 20 per side. Although the matter of expanding the limit on depositions was not specifically raised during the conference, I believe the need to do so was implicit in our discussion and agreement that a period of a year would be appropriate for completion of fact discovery. We have included in item 6.B. reasons we believe the deposition limit should be increased. If you wish to discuss this further, please let me know.

I also wish to follow up on that aspect of our discussion last Wednesday regarding mediation, and, in particular, your suggestion that you and your clients would be willing to consider informally providing information and documents in order to facilitate an early mediation, if we would provide a list of what we believe we need. In this regard, please be advised that we would be willing to participate in mediation at a mutually convenient time and place before a mutually acceptable mediator after our receipt of the following information from KBW with supporting documentation and an appropriate certification of completeness:

Every trade made or transaction engaged in by KBW, or any of its affiliates, for their own accounts in any GFG security, including, but not limited to, any purchase or sale, short or long transaction, put, call or option in any GFG security, or any other transaction involving any GFG security.

Every trade made or transaction engaged in by any natural person who is or was an officer, director or employee of KBW, or any of its affiliates, in any GFG security, including, but not limited to, any purchase or sale, short or long transaction, put, call or option in any GFG security, or any other transaction involving any GFG security.

Every trade or transaction recommended, counseled, advised, or suggested by KBW, or any of its affiliates, or any officer, director or employee of any of them, to another with respect to any GFG security, including, but not limited to, any purchase or sale, short or long transaction, put, call or option in any GFG security, or any other transaction involving any GFG security.

Every trade or transaction executed or effected by KBW, or any of its affiliates, or any officer, director or employee of any of them, with respect to any GFG security, including, but not limited to, any purchase or sale, short or long transaction, put, call or option in any GFG security, or any other transaction involving any GFG security.

All KBW research reports involving any GFG security.

Documents identifying which investors KBW introduced to GFG as part of its capital raising efforts in 2008 and how much those investors invested in GFG.

A description of the work KBW did to justify all fees it received from GFG in 2008.

All communications between KBW and GFG about the amount of KBW's fee.

Any internal memoranda addressing the amount of KBW's fee on the GFG engagement in 2008.

We look forward to your further communications in regard to these matters.

Very truly yours,

Patrick Matusky
Partner

Duane Morris LLP
Suite 200
1940 Route 70 East
Cherry Hill, NJ 08003
P: 856.874.4210
F: 215.405.2966

pmatusky@duanemorris.com
www.duanemorris.com

Please consider the environment before printing this email.

Matusky, Patrick

From: Kavalier, Thomas J. <tkavalier@cahill.com>
Sent: Tuesday, February 28, 2012 6:19 PM
To: Matusky, Patrick
Cc: Kozlov, Hersh; Steigerwald, James H.; Morris, Lee; dapice@sbep-law.com; Suvari, Kate
Subject: RE: Tepper v. KBW--Proposed Discovery Plan and Joint Status Report

We are likewise mindful.

Our plan is to get our redline of your draft back to you tomorrow morning, as early as technology will allow. That will allow us all a couple of days for further discussions if they are needed and the possibility of one final turn before you (and I believe it is you) are required to file the completed document on Friday.

So that you will not be surprised when you see our markup tomorrow, I tell you now that our clients are not interested in mediation at this time on any terms. I appreciate that I am the one who inquired about this subject, but they have reviewed your resulting submission and decided not to proceed. Accordingly, the draft we return to you tomorrow will reflect this fact.

Thomas J. Kavalier | Partner
Cahill Gordon & Reindel LLP
80 Pine Street, New York, NY 10005
t: +1.212.701.3406 | f: +1.212.378.2230 | tkavalier@cahill.com



From: Matusky, Patrick [mailto:PMatusky@duanemorris.com]
Sent: Tuesday, February 28, 2012 6:06 PM
To: Kavalier, Thomas J.
Cc: Kozlov, Hersh; Steigerwald, James H.; Morris, Lee; dapice@sbep-law.com; Suvari, Kate
Subject: Tepper v. KBW--Proposed Discovery Plan and Joint Status Report

Dear Mr. Kavalier,

I am mindful of the Friday filing deadline. When can we anticipate your response?

Patrick Matusky
Partner

Duane Morris LLP
Suite 200
1940 Route 70 East
Cherry Hill, NJ 08003
P: 856.874.4210
F: 215.405.2966

pmatusky@duanemorris.com
www.duanemorris.com